

fraud, etc. At the trial, the Judge decided the question of reasonable and probable cause without leaving to the jury any question as to whether the statements in the defendant's affidavit fairly stated the case.

*Held*, that before deciding on the question of reasonable and probable cause, the Judge should have seen that the facts on which he ruled were either proved without contradiction, or admitted, or found by the jury; Burton, J. A., *dissentiente*; Patterson, J. A., *dubitante*.—*Erickson v. Brand*, Court of Appeal, Jan. 30, 1888.

*Railway Company—Shipment of goods to a point beyond defendants' line—Negligence—Construction of conditions of contract—R. S. C. c. 109, s. 104.*

An action to recover damages for the loss of some goods consigned to be carried by the defendants from Toronto to McGregor Station, on the C. P. Railway, in Manitoba, and for injury sustained by other goods by wet, and for delay in transport. The defendants' line of railway extended only as far as Fort Gratiot, Michigan, and the goods were carried the rest of the way by other companies, and were damaged and lost by the negligence of one or more of such companies.

The defendants sought to protect themselves from liability by setting up the 10th condition endorsed on the receipt given to the plaintiff for the amount paid by him for carriage, which was as follows:—"All goods addressed to consignees at points beyond the places at which the company has stations, and respecting which no direction to the contrary shall have been received at those stations, will be forwarded to their destination by public carrier or otherwise, as opportunity may offer, without any claim for delay against the company for want of opportunity to forward them; or they may, at the discretion of the company, be suffered to remain on the company's premises or be placed in shed or warehouse (if there be such convenience for receiving the same) pending communication with the consignees, at the risk of the owners as to damages thereto from any cause whatever. But the delivery of the goods by the company will be considered complete, and all responsibility of the

said company shall cease, when other such carriers shall have received notice that the said company is prepared to deliver to them the said goods for further conveyance; and it is expressly declared and agreed that the said Grand Trunk Railway Company shall not be responsible for any loss, misdelivery, damage, or detention that may happen to goods so sent by them, if such loss, misdelivery, damage, or detention occur after the goods arrive at the said stations or places on their line nearest to the points or places which they are consigned to, or beyond their said limits."

*Held*, that the contract of the defendants was to carry the goods to McGregor Station; and in its true construction, the condition quoted applied only to the forwarding of the goods from the place to which the defendants had contracted to carry them, whether that was a place on the line of the defendants, or on a connecting railway, and had not the effect of limiting the liability of the defendants to anything occurring upon their own line.

*Collins v. Bristol & Exeter R. W. Co.*, 7 H. L. Cas. 194, followed.

*Held*, also, that the provisions of the Railway Act, R. S. C. c. 109, s. 104, which preclude a railway company from relieving themselves from liability by any notice, condition, or declaration, if the damage arises from any negligence, omission, or misconduct of the company or its servants, do not apply to a contract to carry goods over other lines, even though such are within the territorial jurisdiction of the Parliament of Canada.

The judgment of the Queen's Bench Division, 12 O. R. 103, affirmed, but on different grounds.—*McMillan v. Grand Trunk Ry. Co.*, Court of Appeal, Jan. 30, 1888.

*Railway—Expropriation of lands—Compensation—Date at which value to be ascertained—Increase in value owing to railway itself—Deviation of street.*

*Held*, affirming the decision of Ferguson, J., 12 O. R. 624, that in ascertaining the compensation to be made to a landowner for land expropriated for a railway under R. S. C. c. 109, s. 8, the value of the part taken (as well as the increased value of the part not taken, which by s. 21 is to be set off) is to